

Wyoming

WATER RIGHTS FACT SHEET

August 15, 2001

Water Rights System:

Wyoming water law is founded on the doctrine of prior appropriation, or "first in time, first in right". The Wyoming constitution states that all natural waters within the boundaries of the state are property of the State. The State Engineer is charged with the regulation and administration of the state's water resources. Wyoming's water law is contained in Title 41, Wyoming Statutes Annotated, 1977, and can be found at: <http://legisweb.state.wy.us/statutes/sub41.htm>.

Responsible Agency:

The State Engineer's Office is the water rights administrator and is responsible for the appropriation, distribution, and management of the surface and groundwater throughout the state. Wyoming is divided into four water divisions for administration purposes. Each of these divisions is headed by a superintendent who administers the waters of each water division. These four superintendents and the State Engineer comprise the Wyoming Board of Control. The Board of Control meets quarterly to adjudicate water rights and to consider other matters pertaining to water rights and water appropriation. The Board of Control is also responsible for any requests for changes in point of diversion, change in use, change in the area of use, or abandonment of a water right.

Application Process:

Prior to statehood in 1890, a water right could be established by the use of water and the filing of a claim with the territorial officials. Water rights with priority dates before 1890 are termed "territorial" rights. Since statehood, however, the only way to obtain a surface or a ground water right, is by filing an application with the State Engineer. The types of applications that can be filed in Wyoming can be seen in Appendix One. The date the application is filed establishes the water right's priority date. The application is then reviewed and evaluated to ensure that the proposed use does not interfere with any existing rights or harm the public welfare. In addition to this review, groundwater applications (for projects over 25 gallons per minute) within a groundwater control area, must be approved by the control area's advisory board. In these control areas, an application also must be advertised in a local newspaper.

For both surface and groundwater, the State Engineer has the authority to approve or reject the application. In approving an application, the State Engineer can impose conditions or limitations on the application to protect existing water rights, further define the extent of the application, and address any other issue deemed necessary. The applicant may appeal the State Engineer's final decision to the Board of Control if the applicant disputes the findings.

If an application is approved by the State Engineer, the application achieves the status of "permit". The permittee is then given a specified time period (usually one year) within which to commence any necessary construction, and an additional time period (usually five years) within which to complete the project and put the water to beneficial use. The permittee is required to submit a notice of commencement and a notice of completion with the State Engineer's office. When the notice of completion is received, a proof of completion is prepared. The proof is sent to the appropriate water division superintendent for field inspection and advertised for public comment. For groundwater rights, the State Engineer, not the superintendent, verifies the information through field inspections. Protests can be brought against the permit, and can lead to public hearings. Once proof of beneficial use is verified and any disputes are settled, the Board of Control is notified and they issue a "Certificate of Appropriation" (or a "Certificate of Construction" for reservoirs). It normally takes about three months to get an approved water right application back from the State Engineer's office. Therefore, the typical time frame for a permit is three months, but the final approval of the water right does not occur until the project has been constructed.

Once a certificate is issued, the water right is referred to as having "adjudicated status", and the right is listed in the tabulation of adjudicated rights. A water right that is not adjudicated (a water right that is going through the application process) is often referred to as an "inchoate right". Once adjudicated, the water right is permanently attached to the specific land or place of use described on the certificate, and it cannot be removed except by action of the Board of Control. Any disputes with the Board of Control can be appealed to district court.

Point of Diversion and Change of Use Procedures:

A point of diversion is required for all water rights (except for instream flow rights which require the identification of the appropriate stream segment). Changes in the point of diversion require the filing of a petition with the State Engineer's office for unadjudicated rights and with the Board of Control for adjudicated rights. Although a point of diversion is required for all water rights, the water right is attached to and defined by the place of use, not the point of diversion.

Any changes in point of diversion, conveyance, or use is done through a petition. The petition goes to the Board of Control for adjudicated rights or to the State Engineer if the water right is inchoate. Changes of use are only granted if the quantity of transferred water does not exceed historic consumptive use or diversion rates, does not decrease the amount of historic runoff, and does not impair other existing rights.

State Recognized Beneficial Uses:

Wyoming recognizes the following beneficial uses. Although these categories apply to both surface and ground water, the definition may be different when pertaining to surface as opposed to ground water. In addition, water rights holders are limited to withdrawals necessary for the beneficial purpose, and these limits are established for each use (for example, irrigators are allowed to divert up to 1 cfs for each 70 acres under irrigation).

Irrigation Municipal Industrial Power generation Recreational	Stock Domestic Pollution control Instream flows Miscellaneous
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Groundwater:

The application process for groundwater is quite similar to that for surface water (see above). In Wyoming, however, surface and groundwater are treated as hydrologically separate. If, however, a user protests that ground and surface water appear to be part of the same source, the state will investigate (using monitoring wells). If a hydrologic connection is found between the two sources, the water use is treated as one source. Until this hydrologic connection is established, groundwater and surface water are assumed to be separate. In addition, springs producing more than 25 gallons per minute are treated as surface water, and those producing less than 25 gallons per minute are treated as groundwater.

Prior to 1947, the groundwater division was responsible for maintaining a registration of groundwater rights for all uses except stock and domestic. In 1955, legislation was passed requiring that a permit be obtained from the State Engineer's office prior to the drilling of all wells, except stock and domestic wells. In 1969, the law was amended requiring a permit for the drilling of any water well. As a result, groundwater rights can only be obtained through the State Engineer. Groundwater rights are issued for the same beneficial uses as surface water rights.

Due to the large scale development of groundwater for irrigation use in some areas of Wyoming, three groundwater management districts called Control Areas have been established. An advisory group is elected in each of the Control Areas to review new permit applications, review requests for water right changes, and advise the State Engineer's office regarding such items.

Water Rights:

There are no restrictions in Wyoming as to who can hold a water right (with the exception of instream flows which can only be held by the state). Any entity including a federal agency, state board, corporation, district, or individual may hold a water right. In addition, water rights can be held jointly by a group of individuals where each individual is listed as a co-owner.

A water right in Wyoming is considered a property right, but it is a right which is attached to the lands or to the place of use specified in the permit. Water rights can be transferred to a new place of use through a petition to the State Engineer (or to the Board of Controls for adjudicated rights). Wyoming water law, however, expressly prohibits the sale of water rights. Since water rights are attached to the land, they cannot be sold separately from that land, but can be included in the sale of land.

A water right in Wyoming can be lost by abandonment. There are three ways in which abandonment can be initiated. The first is voluntary abandonment by the water right holder. In second another water user can claim that the reactivation of an allegedly abandoned water right would injure their right. This occurs if a right has not been used for a period of five consecutive years, and a junior (in some case a senior) appropriator brings a declaration of abandonment to the Board of Control. The third way abandonment can occur is the State Engineer can initiate it if it is felt water has not been put to beneficial use for five consecutive years and a reallocation would be in the public interest. Water lost through abandonment reverts back to the public and is subject to future appropriation.

Adjudications:

Adjudications are conducted for both surface and groundwater in Wyoming, and adjudicated rights can be obtain both through the administrative process and through court order. The application process discussed above results in an adjudicated right through the administrative procedures. Once a certificate is issued by the Board of Control, the water right is adjudicated and listed in the tabulation of adjudicated rights. General adjudications through the courts also result in adjudicated rights. The primary reason for general adjudications in Wyoming is the determination and integration of tribal and federal water rights.

Once a water right is adjudicated, any action on the that right (change of use, place of diversion, etc.) must go through the Board of Control. When an entity holds an adjudicated water right, no further inspection is required and the owner is not required to continually submit proof of beneficial use. An adjudicated right exists in perpetuity and can only be lost through abandonment (see above).

Ongoing Adjudications:

The adjudication of water rights in Wyoming is part of the ongoing application process. In addition to these administrative adjudications, general adjudications can take place through the courts. The only general adjudication taking place is in division three (the Big Horn Basin). This adjudication is almost complete and no other general adjudications are currently occurring.

Instream Flows:

Instream flow legislation was enacted in Wyoming in 1986. Only the State of Wyoming may hold a right for instream flow, but no single agency has sole responsibility for the instream flow program. The Game and Fish Department identifies priority streams, prepares biological assessments, and makes instream flow recommendations to the Water Development Commission. The commission prepares hydrologic analysis and then applies to the State Engineer for an instream flow water right. The State Engineer studies the feasibility of the instream flow segment and has the authority to approve the application. A public hearing is required, at which, information is presented and there is an opportunity for public comment. If

approved by the State Engineer, an instream flow right is established. Water for instream flow can come from new appropriation or through the transfer of existing rights. The transfer of existing water rights, however, can only be done by voluntary transfer or gift. In order to ensure "voluntary" transfers, Wyoming law expressly denies any power of condemnation or the purchase of existing rights for instream flow.

Recognized Beneficial Uses for Instream Flow:

Instream flow rights in Wyoming may only be used to establish or maintain new or existing fisheries. Other uses commonly associated with instream flow (recreation, aesthetics, water quality, etc.) are not defined as beneficial uses under Wyoming water law.

Holdership of Instream Flow Water Rights:

Only the State of Wyoming may apply for and hold an instream flow right. Other entities, however, may request application for an instream flow right. In addition, the State of Wyoming can accept water rights as a gift and convert them to instream flow (as long as the purpose is to support fisheries).

Quantification Requirements and Procedures:

Wyoming requires an assessment of the entire reach of the stream covered by the proposed instream flow right. The Game and Fish Department must analyze the stream and determine that the proposed flows are adequate to support fisheries.

BLM Specific Information:

The State of Wyoming does not require a right-of-way approval by the BLM prior to approving an application. There is a statement on the water right permit form which states that the granting of a water right does not grant an easement and that the applicant is responsible for obtaining any rights-of-way needed to perfect the permit.

The BLM pays filing fees for water rights applications. The fee for stock reservoirs, wells, and springs are \$25, and the fee for any dam over twenty feet high or impounding more than twenty acre-feet is \$100.

Official Contact:

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307-777-6150
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Appendix One: Types of Applications

Permits are issued in Wyoming for:

- * Transporting water through ditches or pipelines.
- * Storage in reservoirs.
- * Storage in smaller (under 20 acre-feet of capacity and a dam height less than 20 feet) reservoir facilities for stockwater or wildlife purposes.
- * Enlargements to existing ditch or storage facilities.
- * Instream flow purposes.